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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/693,616	10/24/2003	Eugene A. Helmetsie	60,137-206;136-3031-U	6469

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EXAMINER

HUYNH, KHOA D

ART UNIT PAPER NUMBER

3751

DATE MAILED: 06/29/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 10/693,616	<b>Applicant(s)</b> HELMETSIE ET AL.	
	<b>Examiner</b> Khoa D. Huynh	<b>Art Unit</b> 3751	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 24 October 2004.
- 2a) ☐ This action is FINAL.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-24 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-24 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some    \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Claim Objections***

1. Claim 8 is objected to because of the following informalities: the recitation "wall portion" should be changed to read --wall portions--. Appropriate correction is required.
2. Claim 9 is objected to because of the following informalities: the recitation "wall portion" should be changed to read --wall portions--. Appropriate correction is required.
3. Claim 14 is objected to because of the following informalities: the recitation "outer edge" should be changed to read --outer flanges--. Appropriate correction is required.
4. Claim 15 is objected to because of the following informalities: the recitation "corner flange" should be changed to read --corner flanges--; and the recitation "outer edge" should be changed to read --outer flanges--. Appropriate correction is required.

### ***Claim Rejections - 35 USC § 112***

5. The following is a quotation of the second paragraph of 35 U.S.C. 112:  

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.
6. Claims 17 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The recitations "said first and said second" lack antecedent basis for this limitation in the claim.

***Claim Rejections - 35 USC § 102***

7. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

8. Claims 1, 3-5, 10-12 and 18-23, as presently understood, are rejected under 35 U.S.C. 102(e) as being anticipated by Lippe (6698037).

Regarding claim 1, the Lippe reference discloses a shower surround (Fig.

1). The shower surround includes a base portion (1), a first and second wall portions (3) and a corner portion (5) engaged with the base, the first and second wall portions.

Regarding claim 18, the method as claimed would be inherent during the normal use and operation of the Lippe device.

Regarding claims 3-5, as schematically shown in the top view of Figure 24, the corner portion (5) includes a upper lock tab (the portion that engages the walls 3) locating on and extending from the horizontal top of the corner portion and a lower lock tab (the portion that engages the walls 3) that inherently located on the lower portion of the corner portion. The lower lock tab is generally L-shape.

Regarding claim 10, as schematically shown in Figure 21, the base portion, the first wall portion and the second wall portion each includes a flange (17 and 13) extending at least partially around the periphery thereof.

Regarding claims 11 and 12, the Lippe reference, as schematically shown in Figure 22, shows the attachment of the base portion to the wall studs and the edge trim portion of the wall portion to the wall studs with fasteners that pass through a groove (that is capable of holding a glass) defined by the edge trim portion.

Regarding claims 19-23, the method as claimed would be inherent during the normal use and operation of the Lippe device.

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

9. Claims 1-3, 18 and 21, as presently understood, are rejected under 35 U.S.C. 102(b) as being anticipated by Bunyard (4993201).

Regarding claim 1, the Bunyard reference discloses a shower surround (Fig. 1A). The shower surround includes a base portion (12), a first and second wall portions (46) and a corner portion (16) engaged with the base, the first and second wall portions.

Regarding claim 18, the method as claimed would be inherent during the normal use and operation of the Bunyard device.

Regarding claim 2, the corner portion includes a corner tab (at 22) that is engageable with the corner slot (at 13) with the base portion.

Regarding claim 21, the method as claimed would be inherent during the normal use and operation of the Bunyard device.

Regarding claim 3, the corner portion (16) includes an upper block tab (26) and a lower lock tab (29).

10. Claims 1, 3, 6-9, 13, 18 and 20, as presently understood, are rejected under 35 U.S.C. 102(b) as being anticipated by Daugherty et al. (2648409).

Regarding claim 1, the Daugherty et al. reference discloses a shower surround (Fig. 3). The shower surround includes a base portion (14), a first and second wall portions (8 & 9) and a corner portion (5) engaged with the base, the first and second wall portions.

Regarding claim 18, the method as claimed would be inherent during the normal use and operation of the Daugherty et al. device.

Regarding claim 3, the corner portion (5) includes an upper lock tab (the upper portion of element 35) and a lower lock tab (the lower portion of element 35).

Regarding claim 6, as schematically shown in Fig. 3, the surround further includes an upper lock slot and a lower lock slot located adjacent an inner edge of each of the first and second wall portions, the upper lock slot and the lower lock slot respectively receiving the upper lock tab and the lower lock tab.

Regarding claims 7-9, as schematically shown in Fig. 3, the surround further includes a corner flange (35) extending from each of the outer edge of the corner portion. A slot (48) extends along the first and the second wall portions,

each of the corner flanges respectively engageable with the slots. Each of the slots (48) extends vertically along the first and second portions for the lengths of the first and second wall portions.

Regarding claim 20, the method as claimed would be inherent during the normal use and operation of the Daugherty et al. device.

Regarding claim 13, the surround further includes an edge rim portion (60) which at least partially overlays a flange extending at least partially around a periphery of the first wall portion.

11. Claims 14-17, as presently understood, are rejected under 35 U.S.C. 102(b) as being anticipated by Jones (1933857).

Regarding claim 14, the Jones reference discloses a shower surround (Fig. 1). The surround includes a base portion (10) having corner slot (44), a first wall portion (14) having an upper lock slot (formed by element 32 located at the upper portion of portion 14) and a lower lock slot (formed by element 32 located at the lower portion of portion 14), a second wall portion (13) having an upper lock slot (formed by element 32 located at the upper portion of portion 13) and a lower lock slot (formed by element 32 located at the lower portion of portion 13), and a corner portion (27) having a corner tab (45) engaged with the corner slot (44). As schematically shown in Figure 5, the corner tab further includes an upper lock tab (the upper portion of element 28) and a lower lock tab (the lower portion of element 28) adjacent a first and a second outer edges of the corner

portion engageable with the upper lock slot and the lower lock slot of the first and second wall portions.

Regarding claim 15, the shower surround further includes a first and second corner flanges (the edge portions of elements 34) extending respectively from the first and the second outer edges of the corner portion.

Regarding claim 16, the first wall portion further includes a first slot (formed by one of the element 32) and a second slot (formed by one of the element 32), the first and second corner flanges respectively engageable with the first and second slots.

Regarding claim 17, each of the slots is extending vertically along the first and second wall portions.

***Claim Rejections - 35 USC § 103***

12. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

13. Claim 24 is rejected under 35 U.S.C. 103(a) as being unpatentable over Lippe.

The Lippe reference DIFFERS in that it does not include a glass panel as claimed. It, however, would have been obvious to one of ordinary skill in the art the time the invention was made to employ a glass panel since the use of a glass panel in a shower enclosure is relatively known to provide a user a convenient way to check him or her if so desired.



Regarding claim 24, the method as claimed would be inherent during the normal use and operation of the modified Lippe device.

***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Khoa D. Huynh whose telephone number is (571) 272-4888. The examiner can normally be reached on M-F (7:00-4:30).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Justine Yu can be reached on (571) 272-4835. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



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